

## Assembly Bill No. 1613

### CHAPTER 792

An act to amend Sections 17072 and 17140 of, and to add Section 17204 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 23, 1998. Filed  
with Secretary of State September 24, 1998.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1613, Scott. Personal income taxes: education.

The Personal Income Tax Law incorporates by reference various provisions of the federal Internal Revenue Code as enacted as of a specified date.

This bill would enact the Higher Education Affordability Act which would make certain recent changes in federal income tax laws applicable, with specified exceptions and modifications, for purposes of the Personal Income Tax Law with respect to qualified state tuition programs and the deduction for interest paid on education loans.

This bill would take effect immediately as a tax levy.

*The people of the State of California do enact as follows:*

SECTION 1. This act shall be known and may be cited as the Higher Education Affordability Act.

SEC. 2. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. (a) Section 62 of the Internal Revenue Code, relating to adjusted gross income defined, shall apply, except as otherwise provided.

(b) The amendments to Section 62 of the Internal Revenue Code, made by Section 13213 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications to deduction for moving expenses, shall apply to taxable years beginning on or after January 1, 1996.

(c) The deduction allowed by Section 17204, relating to interest on education loans, shall be allowed in computing adjusted gross income.

SEC. 3. Section 17140 of the Revenue and Taxation Code is amended to read:

17140. (a) For purposes of this section, the following terms have the following meanings as provided in the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code):

(1) “Beneficiary” has the meaning set forth in subdivision (c) of Section 69980 of the Education Code.

(2) “Benefit” has the meaning set forth in subdivision (d) of Section 69980 of the Education Code.

(3) “Participant” has the meaning set forth in subdivision (h) of Section 69980 of the Education Code.

(4) “Participation agreement” has the meaning set forth in subdivision (i) of Section 69980 of the Education Code.

(5) “Scholarshare trust” has the meaning set forth in subdivision (f) of Section 69980 of the Education Code.

(b) Except as otherwise provided in subdivision (c), gross income of a beneficiary or a participant does not include any of the following:

(1) Any distribution or earnings under a Scholarshare trust participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(2) Any contribution to the Scholarshare trust on behalf of a beneficiary shall not be includable as gross income of that beneficiary.

(c) (1) Any distribution under a Scholarshare trust participation agreement shall be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code, as modified by Section 17085, to the extent not excluded from gross income under this part. For purposes of applying Section 72 of the Internal Revenue Code, the following apply:

(A) All Scholarshare trust accounts of which an individual is a beneficiary shall be treated as one account, except as otherwise provided.

(B) All distributions during a taxable year shall be treated as one distribution.

(C) The value of the participation agreement, income on the participation agreement, and investment in the participation agreement shall be computed as of the close of the calendar year in which the taxable year begins.

(2) A contribution by a for-profit or nonprofit entity for the benefit of an owner or employee of that entity or a beneficiary whom the owner or employee has the power to designate, including the owner or employee’s minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.

(3) For purposes of this subdivision, “distribution” includes any benefit furnished to a beneficiary under a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(4) (A) Paragraph (1) shall not apply to that portion of any distribution that, within 60 days of distribution, is transferred to the credit of another beneficiary under the Scholarshare trust who is a “member of the family,” as that term is used in Section 529(e)(2) of

the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former beneficiary of that Scholarshare trust.

(B) Any change in the beneficiary of an interest in the Scholarshare trust shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a “member of the family,” as that term is used in Section 529(e)(2) of the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former beneficiary of that Scholarshare trust.

(d) For purposes of determining adjusted gross income, Section 62(a)(9) of the Internal Revenue Code shall not apply to any amount forfeited upon distribution of an account created pursuant to a participation agreement.

(e) The amendments made to the Internal Revenue Code by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34) shall apply to taxable years beginning on or after January 1, 1998.

SEC. 4. Section 17204 is added to the Revenue and Taxation Code, to read:

17204. Section 221 of the Internal Revenue Code, as added by Section 202 of the Taxpayer Relief Act of 1997 (P.L. 105-34), relating to interest on education loans, shall apply for any taxable year beginning on or after January 1, 1998.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

